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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

MM Docket No. 93-300

STEPHEN O. MEREDITH

)

File No. BPH-920430MD

)

AL HAZELTON

)

File No. BPH-920430ME

For Construction Permit for a
New FM Station on Channel
243C1 in Audubon, Iowa

To: The Honorable John M. Frysiak
Administrative Law Judge

REPLY

Al Hazelton ("Hazelton"), by his attorneys and pursuant to Section 1.229 of the Commission's Rules, hereby replies to the Opposition to Petition to Enlarge Issues filed in this proceeding by Stephen O. Meredith ("Meredith") on February 18, 1994. In support thereof, Hazelton states as follows:

1. Hazelton, on January 25, 1994, submitted a Petition to Enlarge Issues against Meredith. The Petition claimed, inter alia, that Meredith had failed to meet the Commission's financial qualifications requirements. The matters at issue were whether the enterprise that was providing the principal loan commitment to Meredith, O. A. Meredith, Inc. ("OAM"), met Commission requirements for a reasonable assurance of financing and, further, whether the death of the President of OAM affected OAM's commitment to Meredith.

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2. Meredith's Opposition speaks to the merits of the issues but offers no Commission precedent in support of its arguments in regard to the two crucial points at issue in this matter: first, can an applicant place reasonable assurance on a financial statement from a third-party lender, not a financial institution, that is not prepared according to generally accepted accounting principles ("GAAP") and, second, must the third-party lender's financial statement be prepared contemporaneously with the filing date of the application. In the absence of any showing by Meredith of Commission precedent to refute the claims that have been made, the financial issue must be designated against Meredith.

3. It is uncontested that Meredith has sought to obtain reasonable assurance from a non-financial institution. Where one elects to do so, the applicant is on notice that it must meet a special showing that its lender is qualified. See Northampton Media Associates, 4 FCC Rcd 5517, 5519 (1989), aff'd, 941 F. 2d 1214 (D.C. Cir. 1991). Meredith, however, has not met this requirement. What has been presented by Meredith is an undated balance sheet prepared by an unidentified party without any indication that accounting tests and standards, such as GAAP, were in any measure followed in its preparation.

4. The reported decisions in this area point out the unsatisfactory nature of Meredith's documentation. In Washington's Christian Television Outreach, Inc., 94 FCC 2d 1360 (Rev. Bd. 1983), reliance on a non-financial institution lender was only permitted because the institution was able to present its audited

annual financial statements. Only recently, the Mass Media Bureau, in Weston Properties XVIII Limited Partnership, DA 93-1452, released December 7, 1993, issued a decision that is particularly telling on this point. In Weston Properties, involving a request to reduce a forfeiture, the broadcast licensee proffered unaudited financial statements prepared by its accountant. However, these unaudited statements were denied consideration, even though licensees have the responsibility to act in a truthful manner,¹ since the Commission required that financial evidence in support of a reduction in a forfeiture be prepared according to GAAP. If a licensee's own unaudited financial statements do not merit consideration by the Commission, why should a non-licensee's unaudited statements be given any different, and superior, treatment?

5. The reason why the Commission has required financial documentation to meet GAAP is obvious. The use of GAAP, which is an accepted set of accounting procedures adopted by the accounting profession, is the only mechanism that gives assurance to a party reviewing the financial statements of an enterprise that the information contained therein can be relied upon. Hazelton recognizes that Meredith is a member of the family that owns OAM and is a shareholder, but does believe that this makes the unaudited financial statements any more reliable. Meredith does not state that he is a day-to-day participant in the affairs of the

¹ Section 1.17 of the Commission's Rules requires licensees to provide responses to inquiries that true and correct and without misrepresentations or willful material omissions.

enterprise nor does he claim, by education or training, to have the skills to determine if the financial statements he has offered meet GAAP requirements. Further, Meredith has not stated that he has examined the finances of OAM in any particular depth nor had his own accountant perform an audit of OAM's financial records. Clearly, the Commission has recognized that if a party elects to use an entity that is not a financial institution as its lender, it must present financial evidence that can be reasonably relied upon. Meredith's documentation involving OAM, being undated, unsigned, and having not been prepared in accordance with GAAP, falls far short of the standards required of him.

6. Even assuming, arguendo, that the documentation need not meet GAAP, it still must be prepared on a contemporaneous basis. This, too, was not met by Meredith. In Northampton, supra, the Commission stated that the financial information relied upon must be valid as of the time of certification. 4 FCC Rcd at 5519. Meredith's information does not possess any date and neither the parties nor the Commission is obligated to speculate as to what the date of preparation, if any, might be. Again, Meredith had the burden of producing a contemporaneous document and elected not to do so. As a result, he has not met the tests that the Commission has established and an issue must be designated.²

² Hazelton also raised an issue as to whether the death of Mr. Owen A. Meredith, the author of the commitment letter, would have an impact on Meredith's financial qualifications. Contrary to Meredith's contentions, this was not a "callous" act, but represented a significant concern on Hazelton's part. In any event, Meredith has provided documentation that evidence no change in OAM's commitment and, at least at this point in time, there is

WHEREFORE, it is respectfully requested that the requested hearing issues be designated against Meredith.

Respectfully submitted,

AL HAZELTON

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Dated: March 3, 1994

no need to pursue the issue at hearing.

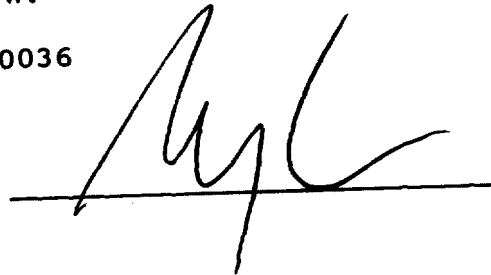
CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 3rd day of March, 1994, served a copy of the foregoing, "Reply," on the following parties by first-class mail, postage prepaid:

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A handwritten signature, likely of Barry A. Friedman, is written over a horizontal line. The signature is stylized and cursive.

* By Hand